Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	)	
	)	
International Comparison and Survey Requirements in the Broadband Data Improvement Act	)))	GN Docket No. 09-47,
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)))))))	GN Docket No. 09-137

COMMENTS – NBP Public Notice #19

ACUTA: The Association for Information Communications Technology Professionals in Higher Education ("ACUTA"), EDUCAUSE and Internet2 (the "Higher Education Parties") respectfully submit these comments in response to the Federal Communications Commission's ("FCC") public notice requesting comment on the role of the universal service fund and intercarrier compensation in the national broadband plan.[1] These comments are limited to certain aspects of item 2 of PBN Notice #19, which concerns the contribution methodology for the universal service fund.

[1] Public Notice, *Comment Sought on the Role of the Universal Service Fund and Intercarrier Compensation in the National Broadband Plan*, NBP Notice #19, GN Docket Nos. 09-47, 09-51 and 09-137, DA 09-2419, rel. Nov. 13, 2009 ("NBP Notice #19").

I. Introduction

ACUTA is a non-profit association whose members include over 800 institutions of higher education within the United States. ACUTA members include both large and small non-profit institutions of higher education, ranging from institutions with several hundred students to major research and teaching institutions with greater than 25,000 students. ACUTA member representatives are responsible for managing voice, data and video communications technology services for students, faculty and staff on college and university campuses.

EDUCAUSE is a nonprofit association and the foremost community of IT leaders and professionals committed to advancing higher education. EDUCAUSE programs and services are focused on analysis, advocacy, community building, professional development, and knowledge creation because IT plays a transformative role in higher education. EDUCAUSE supports those who lead, manage, and use information technology through a comprehensive range of resources and activities.

Led by the research and education community since 1996, Internet2 promotes the missions of its members by providing both leading-edge network capabilities and unique partnership opportunities that together facilitate the development, deployment, and use of revolutionary Internet technologies. Internet2 brings the U.S. research and academic community together with technology leaders from industry, government, and the international community to undertake collaborative efforts that have a fundamental impact on tomorrow's Internet.

Given the extensive record that the Commission already has compiled on universal service contribution requirements, the Education Parties anticipate that any analysis of contribution issues in the broadband plan will draw on much of what has been submitted before. Consequently, these comments will focus on the proposal of AT&T to adopt a new scheme based on per-number contributions, which was included in an "emergency petition" filed in July of this year.[2] The petition largely reiterated proposals made in 2008 by AT&T and Verizon. As shown below, AT&T did not address any of the concerns raised by ACUTA and other higher education groups last year, and these issues are critical to any change in the universal service contribution methodology.

II. The AT&T Proposal Would Have an Unreasonable Impact on End-Users that Use Large Quantities of Telephone Numbers.

In its analysis of proposals to change the contribution mechanism, the first question the Commission asks commenters to address is "how their preferred solution would impact end users, who ultimately bear the cost of universal service through carrier pass-through charges."[3] This is the central issue raised by AT&T's proposal, which would effect a significant shift in universal service costs away from users that purchase high-capacity services and do not use significant numbering resources, while shifting costs onto entities – business and non-profit – that depend on direct-dialed calls even while consuming relatively low amounts of capacity.

The specific impact of AT&T's proposal already has been demonstrated to the Commission. ACUTA responded to AT&T's initial proposal in two letters submitted to the Commission late last year.[4] In those letters, ACUTA showed that the AT&T proposal should not be adopted without significant modifications to account for the

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[2] This proposal was the subject of a public notice released by the Commission on September 28. *See* Public Notice, *AT&T Petition for Immediate Commission Action to Reform Its Universal Service Contribution Methodology to Be Incorporation into Record of Comprehensive Universal Service Reform Further Notice of Proposed Rulemaking,* WC Docket No. 06-122, DA 09-2128 (rel. Sept. 28, 2009).

[3] PBN Notice #19 at 2.

[4] *See* Letter of Jeri Semer, Executive Director, ACUTA, to Hon. Kevin J. Martin, *et al.,* FCC, WC Docket No. 06-122, CC Docket No. 06-45, dated Oct. 23, 2008 (the "ACUTA October Letter"), Letter of Jeri Semer, Executive Director, ACUTA, to Hon. Kevin J. Martin, *et al.*, FCC, WC Docket No. 06-122, CC Docket No. 06-45, dated Dec. 3, 2008 (the "ACUTA December Letter"). Copies of these letters are attached as Exhibits 1 and 2, respectively.

disproportionate impact it would have on colleges and universities and on other telecommunications customers that use large volumes of telephone numbers. In particular, ACUTA calculated that the proposal would increase universal service contributions by colleges and universities by 6.6 times over their then-current levels, from $13,000 per year to more than $85,000 a year, even before accounting for additional universal service fees proposed by AT&T for dedicated connections.[5] ACUTA conducted a similar survey this year and found that respondents' universal service costs would increase, on average, by nearly 1,000 percent if the monthly fee were $1.00 per telephone number.[6] If this average were carried across all colleges and universities, it would increase their collective contributions to the universal service fund from approximately $60 million a year to more than $650 million.

In the current economic environment, increases of this magnitude would have a significant impact on college and university technology budgets, which already are strained by shrunken endowments, less support from alumni and governments and constraints on tuition.[7] As a result, it would be difficult for colleges and universities to ameliorate or recover these additional universal service costs. The most likely response would be for colleges and universities to work to reduce their number assignments by eliminating DID numbers and Centrex lines in favor of internal extensions, reducing the number of on-campus telephones and reducing numbers held for aging purposes. These

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[5] *See* ACUTA October Letter at 2, ACUTA December Letter at 2. Last year's proposal called for additional contributions of $5 per 64 kbps trunk and $35 per high speed connection per month.

[6] Because the respondents to the two surveys were somewhat different, the results are not strictly comparable. However, both surveys confirm that colleges and universities would be forced to bear enormous increases in their universal service payments under the AT&T proposal.

[7] As ACUTA noted last year, recent legislation specifically seeks to limit tuition increases.

changes would reduce efficiency and create potential risks to student, faculty and staff safety, but would be necessary to eliminate the excessive costs that the AT&T plan would impose.

While AT&T has suggested that the Commission could adopt a limited number of exemptions to the proposal, that approach would not avoid the impact on colleges and universities. First, AT&T has argued that the exemptions should be adopted only after a new contribution mechanism is put in place, which means that there would be no assurance that they would be adopted at all. Second, AT&T would require exempt entities to apply to USAC for refunds, rather than having carriers charge the correct amount in the first place.[8] There is no reason to place this burden – and the cost of waiting for their money to be returned – on any entity that the Commission has determined should not be required to pay a numbers-based fee.

The Commission could avoid these issues in a variety of ways. As ACUTA described last fall, the simplest alternative is to adopt a numbers-based system for residential and small business customers and retain a revenues-based system for larger customers, including colleges and universities.[9] Indeed, such a system would address nearly all of AT&T's concerns about competitors like Skype and magicJack, since those companies target residential customers, without harming colleges and universities and other users that have many telephone numbers assigned to them.

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[8] AT&T's proposal on this point is particularly inappropriate because Section 254 imposes the obligation to contribute to the universal service fund on the carrier, not the customer. 47 U.S.C. § 254(d). The carrier practice of passing through those costs to customers does not change that requirement.

[9] ACUTA October Letter at 2-3; ACUTA December Letter at 3.

III. Conclusion

For all of these reasons, the Higher Education Parties respectfully request that the Commission act in accordance with these comments.

Respectfully submitted,

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Dated: December 7, 2009

Exhibit 1

ACUTA October Letter

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October 23, 2008

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The Honorable Michael J. Copps
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Federal Communications Commission
445 12th Street, SW, Room 8-B115
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The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A302
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The Honorable Deborah Taylor Tate
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A204
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The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Re: Re: Universal Service Contribution Methodology
WC Docket No. 06-122
Federal-State Joint Board on Universal Service
CC Docket No. 96-45
Written Ex Parte Communication

Dear Commissioners:

I am writing on behalf of ACUTA, the Association for Information Communications Technology Professionals in Higher Education, and in response to the October 20, 2008 written *ex parte* submission of AT&T and Verizon in these proceedings.[1] In that submission, AT&T and Verizon modify their earlier proposal for a new methodology for determining the amount of contributions to the federal

[1] Letter of Mary L. Henz, AT&T Services, Inc., and Kathleen Grillo, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, dated Oct. 20, 2008 (the "AT&T/Verizon Letter").

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assessment, and adds new "connection" charges for commercial users. AT&T and Verizon also propose that the Commission begin a new rulemaking to create categories of exemptions from universal service contributions for end users that would experience a hardship from the new contribution mechanism. ACUTA has reviewed these modifications and has concluded that they do not address the significant issues raised by the original AT&T/Verizon proposal for colleges and universities.

As ACUTA previously has explained, the original AT&T/Verizon proposal, assuming a contribution rate of $1.00 per number per month, would increase the average college or university universal service contribution by nearly eight times, from an average of more than $13,000 a year to an average of more than $100,000 a year. The revised proposal would not, however, address this issue in a meaningful way. Instead, the average college and university would have to pay numbers-based contributions that would be "only" 6.6 times the current contributions and still would be subject to additional contributions of $5 per 64 kbps trunk and $35 per higher-speed connection. In practical terms, this combination would leave colleges and universities in essentially the same situation as the original AT&T/Verizon proposal, with enormous increases in their universal service costs.

In other words, the revised AT&T/Verizon proposal is no improvement, and likely would lead to the same consequences ACUTA described during its meetings with the Commission staff earlier this month. AT&T and Verizon, perhaps in recognition of that fact, suggest that the Commission could address potential hardships by creating a mechanism that would allow customers to apply for discounts from the Universal Service Administrative Company.[2]

While ACUTA does not oppose mitigating any hardships a new universal service contribution mechanism might create, the AT&T/Verizon proposal is not an appropriate way to address that issue. Most significantly, it does not really address the issue at all because it suggests that the Commission should put off deciding the question of which customers are entitled to relief until a later day. Given the history of the Commission's consideration of universal service contribution issues, there is no assurance that a decision would be made promptly – or at all – and in the meantime affected customers would continue to pay. In addition, AT&T and Verizon suggest that affected customers, rather than simply being exempted from paying excessive contribution assessments, should be required to apply to USAC for reimbursement, adding an additional layer of administrative burden to the process. It is much simpler, and would be much more effective, to allow exempted entities to avoid paying in the first instance.

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[2] AT&T/Verizon Letter at 4-5.

In light of these considerations, it is apparent that the modified AT&T/Verizon proposal is no better than the original proposal, and should be rejected. Instead, if the Commission does adopt any new contribution methodology it should follow the approach reported in the news media, which would base contributions to the fund from residential customers on how many telephone numbers are assigned to each carrier's customers; retain the current revenue-based contribution mechanism for commercial customers, including colleges and universities; and request comments on whether to modify the contribution system for commercial customers in the future. Indeed, maintaining the revenue-based system for calculating contributions for commercial services will avoid imposing an undue burden on colleges and universities, as well as other users that have many telephone numbers assigned to them, but will not prevent the Commission from reforming the contribution mechanism for consumer services. Whatever methodology the Commission ultimately adopts, it should avoid the rate shock for colleges and universities that would result from adoption of a system based solely on number assignments, and should carefully consider the customer impacts of any new contribution methodology before it adopts changes.

In accordance with Section 1.1206 of the Commission's rules, four copies of this letter are being filed with the Secretary's office on this date.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,

Jeri Semer

Jeri Semer
Executive Director

Enclosure

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ACUTA Universal Service Contribution Analysis

October 23, 2008

This is an analysis of the impact of the AT&T/Verizon proposal to adopt a numbers-based contribution mechanism for the federal universal service fund on colleges and universities. It is based on data obtained by ACUTA in a survey of its members on their current usage of telephone numbers and current universal service contributions.

Impact on Average Institution

Category	Percent of Respondents	Average Monthly USF	Average Annual USF	Monthly USF @ $1/DID	Annual USF @ $1/DID	Monthly USF @ $0.85/DID*	Annual USF @ $0.85/DID*
Tier 1: Less than 2,499 students	14%	$456.99	$5,483.88	$2,887.34	$34,648.08	$2,454.24	$29,450.87
Tier 2: 2,500 to 5,999 students	21%	$100.05	$1,200.60	$2,361.06	$28,332.72	$2,006.90	$24,082.81
Tier 3: 6,000 to 11,999 students	14%	$1,265.71	$15,188.52	$9,951.29	$119,415.48	$8,458.60	$101,503.16
Tier 4: 12,000 to 19,999 students	23%	$2,080.43	$24,965.16	$7,808.57	$93,702.84	$6,637.28	$79,647.41
Tier 5: 20,000 and more students	28%	$1,298.44	$15,581.28	$16,212.31	$194,547.72	$13,780.46	$165,365.56
Weighted average	100%	$1,104.25	$13,251.01	$8,628.65	$103,543.78	$7,334.35	$88,012.22

Overall college and university contributions

Current	$59,629,532
@ $1/DID/month	$465,947,030
@ $0.85/DID/month*	$396,054,975

*Excludes contributions for dedicated connections under AT&T/Verizon October 20, 2008 proposal.

Notes:

1. Results based on a survey of members of ACUTA between January and February, 2008.
2. Average weighted by number of schools providing data in each category.
3. Overall contribution based on an estimate of approximately 4,500 colleges and universities in the United States.
4. Source: U.S. Department of Education, statistics for 2006-07 at http://nces.ed.gov/programs/digest/d07/tables/dt07_255.asp?referrer=list.

Exhibit 2

ACUTA December Letter

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December 3, 2008

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The Honorable Michael J. Copps
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Re: Re: Universal Service Contribution Methodology
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Federal-State Joint Board on Universal Service
CC Docket No. 96-45
Written Ex Parte Communication

Dear Commissioners:

I am writing on behalf of ACUTA, the Association for Information Communications Technology Professionals in Higher Education, and in response to the November 21, 2008 written *ex parte* submission of AT&T in these proceedings.[1] In that letter, AT&T reiterates its support for a contribution methodology for the federal universal service fund that would require all customers to make contributions

[1] Letter of Mary L. Henze, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, dated Nov. 21, 2008 (the "AT&T Letter").

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that are based on assigned telephone numbers. AT&T's proposal, like its earlier position on this issue, does not account for the significant issues that it would raise for colleges and universities and other telecommunications customers that are assigned large blocks of telephone numbers, and should be rejected.

AT&T's position is that the Commission should require per-number payments from all customers, beginning at a level of $0.85 per number per month. It also argues that the Commission should not require carriers to determine if telephone numbers actually are in use, but simply should impose the contribution requirement on all numbers that customers could use to make or receive calls.[2] Further, AT&T proposes that the Commission defer the question of whether any particular users (other than Lifeline customers) would be exempt from making universal service contributions and that any exemptions adopted in the later proceeding be handled through an application and reimbursement process.[3] In short, AT&T asks the Commission to adopt nearly the exact approach proposed by AT&T and Verizon in October.[4]

By reiterating its earlier proposal, AT&T necessarily does not address the flaws in that plan. As described in ACUTA's October 23, 2008 *ex parte* submission, adoption of the AT&T proposal would increase universal service contributions by colleges and universities to 6.6 times their current level, raising the average contribution from $13,000 a year to more than $85,000 based on number usage alone.[5] Colleges and universities also would be subject to additional contributions for dedicated connections, which would raise their costs even more. Such a significant increase in universal service costs would be difficult for colleges and universities to absorb, particularly in a time when they already are being asked to cut costs and are unlikely to find sources of additional revenue.[6]

AT&T also does not address the impact of forcing colleges and universities (as well as other users) to seek exemptions through a separate proceeding or to apply

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[2] *Id.* at 3-6.

[3] *Id.* at 8-9.

[4] *See* Letter of Mary L. Henze, AT&T Services, Inc., and Kathleen Grillo, Verizon, to Marlene Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, dated Oct. 20, 2008. AT&T does propose modifications to the tiers of payments for dedicated connections. AT&T Letter at 2-3.

[5] *See* Letter of Jeri Semer, Executive Director, ACUTA, to Hon. Kevin J. Martin, *et al.*, FCC, WC Docket No. 06-122, CC Docket No. 96-45, dated Oct. 23, 2008 (the "ACUTA October Letter") at 2.

[6] It is likely that the AT&T proposal also would have a disproportionate impact on commercial enterprises that use many telephone numbers.

to USAC for reimbursement for universal service contribution expenses. Among other things, requiring exempt customers to apply for reimbursement would place an unnecessary administrative burden on customers that already are facing hardships by virtue of having to pay greatly-increased universal service fees. Equally important, given the history of universal service proceedings at the Commission, there is no guarantee that the Commission would decide which customers are entitled to exemptions in a timely fashion.[7]

Moreover, AT&T does not address why it would be rational for the Commission to adopt a plan that will require exemptions for certain customers without also adopting the exemptions at the same time. Indeed, if the Commission were to act in such a piecemeal fashion, it would face difficult questions about how to predict the extent to which exemptions would affect contributions and, therefore, the rates to be charged to non-exempt users. Rather, and as ACUTA has suggested, if the Commission is not ready to adopt a comprehensive plan for addressing rate shock concerns affecting commercial customers, it would be much more logical to adopt a specific allocation of universal service costs between residential and business customers, revise the contribution rules for residential customers and then adopt a plan for business contributions at a later date.

Even though AT&T fails to address the flaws in its proposal, it makes several new claims. These claims do not provide any meaningful support for AT&T's proposal. Most notably, AT&T argues that it is inappropriate to distinguish between business and residential services, as suggested in ACUTA's previous filings and in the proposals in Appendices A and C to the Commission's notice, because it is "nearly impossible to distinguish between residential and business telephone numbers." This simply is incorrect – a residential telephone number is one that it is associated with a residential service and a business telephone number is one that is associated with a business service. Given that AT&T and other local telephone companies have spent decades ensuring that business customers do not purchase residential service, distinguishing phone numbers on that basis should not be difficult. Moreover, many of AT&T's objections to proposals in the draft orders for distinguishing business and residential customers fail to recognize that different approaches are appropriate for different types of services.

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[7] *See* ACUTA October Letter at 2-3. ACUTA also notes that AT&T suggests that the Commission might wish to consider adopting some limits on which institutions are eligible for exemptions, potentially based on the size of a college or university's endowment. AT&T Letter at 9. There is no basis for such a distinction among not-for-profit colleges and universities, as the additional burden depends not on the size of an institution's endowment but on its usage of telephone numbers.

For these reasons, it is evident that the Commission should not adopt AT&T's proposal. Instead, any new contribution methodology adopted by the Commission should follow the model described in Appendices A and C of the Commission's notice, basing contributions from residential customers on how many telephone numbers are assigned to each carrier's customers; retaining the current revenue-based contribution mechanism for commercial customers, including colleges and universities; and requesting comments on whether to modify the contribution system for commercial customers in the future. Regardless of the methodology the Commission adopts, it should ensure that the new methodology does not create rate shock for customers that use large quantities of telephone numbers, including colleges and universities, before it adopts any changes.

In accordance with Section 1.1206 of the Commission's rules, four copies of this letter are being filed with the Secretary's office on this date.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,

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